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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/708,315	02/24/2004	David E. Mekas	MASL-31	2314
37690 7590 03/22/2007 WOOD, HERRON & EVANS, LLP (LEAR) 2700 CAREW TOWER 441 VINE STREET CINCINNATI, OH 45202			EXAMINER CHEVALIER, ALICIA ANN	
			ART UNIT 1772	PAPER NUMBER
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		03/22/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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Office Action Summary

Application No.

10/708,315

Applicant(s)

MEKAS ET AL.

Examiner

Alicia Chevalier

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8, 13 and 14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 13 and 14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2/27/07, 2/12/07

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

RESPONSE TO AMENDMENT

1. Claims 1-8, 13 and 14 are pending in the application, claims 9-12 have been cancelled.

REJECTIONS

2. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Specification

3. The amendment filed January 5, 2007 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: "and has a uniform thickness at least in the target area 18 where skin layer 22 extends across the apertures 24, 24a."

Applicant is required to cancel the new matter in the reply to this Office Action.

Claim Rejections - 35 USC § 112

4. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case amended claim 1 contain(s) the limitation "said skin having a

Art Unit: 1772

uniform thickness extending across said apertures in said target area.” The specification is silent with regard to the thickness of the skin, therefore this limitation is considered new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

5. Claim 13 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case amended claim 13 contain(s) the limitation “said skin having an outer surface and being devoid of apertures between said substrate member and said outer surface.” The specification does not disclose that apertures are excluded from the skin, therefore this limitation is considered new matter.

Any negative limitation or exclusionary proviso must have basis in the original disclosure. See *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. Any claim containing a negative limitation which does not have basis in the original disclosure should be rejected under 35 U.S.C. 112, first paragraph as failing to comply with the written description requirement. MPEP § 2173.05(i)

Applicant is required to cancel the new matter in the reply to this Office Action.

6. Claim 14 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case amended claim 1 contain(s) the limitation “said skin having a second thickness less than said first thickness.” The specification is silent with regard to the thickness of the skin, therefore this limitation is considered new matter.

Applicant is required to cancel the new matter in the reply to this Office Action.

ANSWERS TO APPLICANT'S ARGUMENTS

7. Applicant's arguments in the response filed January 5, 2007 regarding the 35 USC 112, first paragraph rejection of record have been carefully considered but are deemed unpersuasive.

Applicant argues that limitation "a uniform thickness extending across said apertures in said target area" is not new matter. That support for this amendment is found in the originally-filed Application with reference to paragraph 0019 and figures 1, 2 and 2A.

Applicant's specification in original paragraph [0019] recites:

[0019]

In the embodiments depicted in FIGS. 1, 2, and 2A, skin layer 22 extends across apertures 24, 24a. It will be recognized, however, that the material forming the skin layer 22 may alternatively fill, or partially fill, some or all of the apertures 24, 24a, as depicted in FIG. 2B. When the apertures 24 are formed through substrate member 20, a secondary skin layer 30 may be formed on the opposing side of the substrate member 20. Advantageously, filling apertures 24, 24a and forming the secondary skin layer 30 helps to ensure that skin layer 22 is firmly secured to the substrate member 20 and inhibits shifting of the skin layer 22 over the substrate member 20 which might otherwise degrade the aesthetic feel of the armrest 10. Moreover, selective filling of the apertures 24, 24a enables the feel of the armrest 10 to be tuned to a desired softness. With reference to FIG. 2, the feel of the armrest 10 may also be selectively tuned to a desired softness by varying the height H and/or thickness T of those portions of substrate member 20 defining wall sections 32 between apertures 24, 24a.

It noted that the original specification merely disclosed thickness variations for the substrate not the skin layer. Furthermore, Applicant's amendments to the specification have already been addressed above in the objection to the specification. Applicant is solely relying upon the drawing to show support for the limitation "a uniform thickness extending across said apertures in said target area" and "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue." MPEP 2125. Therefore, since Applicant is trying to add precision to the thickness by claiming uniformity and is therefore it is new matter

Art Unit: 1772

because the specification is completely silent on the issue of thickness uniformity in regard to the skin layer.

As the examiner has noted above, Applicant is solely relying upon the drawings for support for the new limitations the Examiner has stated are new matter. The drawings do not show support for these limitations because they are not drawn to scale and there are only 5 figures which do not show all perspective view of the skin layer to concluded any particulars about the thickness of the skin layer. There is just not enough detail and the drawing show support for these limitations.

Furthermore, Applicant's arguments about the negative limitations rejections are unpersuasive for the same reasons.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 1772

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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3/18/07



**ALICIA CHEVALIER
PRIMARY EXAMINER**